

AMENDED IN SENATE AUGUST 19, 2016

AMENDED IN SENATE AUGUST 17, 2015

AMENDED IN SENATE JULY 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1052**

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**Introduced by Assembly Member Cooley**

February 26, 2015

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An act to amend Sections 22203 and 22257 of the Education Code, and to amend Section 20172 of, and to add Section 20211 to, the Government Code, relating to retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 1052, as amended, Cooley. ~~Retirement~~ *State Teachers' Retirement System*: board authority: of administration: investments.

The California Constitution grants the retirement board of a public pension or retirement system plenary authority and fiduciary responsibility for investment of moneys and administration of the system, as specified. The California Constitution also requires the retirement board of a public pension or retirement system, consistent with the exclusive fiduciary responsibilities vested in it, to have the sole and exclusive power to provide for actuarial services in order to assure the competency of the assets of the public pension or retirement system.

The Teachers' Retirement Law creates the State Teachers' Retirement System for the provision of service, disability, and other benefits to members. The law requires the assets of the plan, including, but not limited to, employee contributions, employer contributions, and investment income, to be deposited into the Teachers' Retirement Fund,

and continuously appropriates the fund for, among other things, the payment of member benefits. The Teachers' Retirement Law authorizes the board to appoint investment managers to manage the assets of the fund.

This bill would ~~specify~~ *provide* that, without regard to state contracting laws, *except as specified*, the board is authorized to contract for services for the investment of the fund ~~or appoint investment managers to manage the assets of the fund~~ under the terms and conditions and utilizing the processes the board deems necessary and consistent with its fiduciary ~~duties, as specified:~~ *duties*. The bill would require the board's processes to be ~~competitive, except as elected by the board, as specified:~~ *competitive, except as specified, and would prescribe standards for those processes. The bill would grant an investment manager, as specified, who is not selected in the course of a noncompetitive contract process for investment services to have the opportunity to protest. The bill would also make conforming changes.*

~~The Public Employees' Retirement Law (PERL) creates the Public Employees' Retirement System (PERS) and the Public Employees' Retirement Plan for the provision of pension benefits to members. PERL requires the assets of the system, including, but not limited to, employee contributions, employer contributions, and investment income, to be deposited into the Public Employees' Retirement Fund, a continuously appropriated fund. PERL grants the Board of Administration of PERS exclusive control of and fiduciary responsibility for the investment of the fund and authorizes the board to retain a bank or trust company to serve as a custodian for services in connection with the investment of the fund.~~

~~This bill would specify that, without regard to state contracting laws, the board of administration is authorized to contract for services with a bank or trust company for those custodial services and to invest the assets of the fund under the terms, conditions, and processes the board deems necessary and consistent with its fiduciary duties and is not required to comply with any law or rule pertaining to state contracting to do so. The bill would require the board's processes to be competitive, except as specified. The bill would specify that the board is authorized to contract with individuals or outside firms with demonstrated expertise in trade order management services in connection with investment of the retirement fund without regard to state contracting laws. The bill~~

would require the board's processes in this regard to be competitive, except as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 22203 of the Education Code is amended  
2 to read:

3 22203. (a) The board has exclusive control of the investment  
4 of the Teachers' Retirement Fund. Except as otherwise restricted  
5 by the California Constitution and by law, the board may in its  
6 discretion invest the assets of the fund through the purchase,  
7 holding, or sale thereof of any investment, financial instrument,  
8 or financial transaction when the investment, financial instrument,  
9 or financial transaction is prudent in the informed opinion of the  
10 board.

11 (b) Notwithstanding any other law pertaining to state  
12 ~~contracting~~, *contracting, except for Section 8546.7 of the*  
13 *Government Code*, the board, in exercising its discretion pursuant  
14 to this section, may contract for *investment* services under the  
15 terms and conditions and utilizing the processes the board deems  
16 necessary and consistent with its fiduciary duties.

17 (c) The processes utilized by the board pursuant to subdivision  
18 (b) shall be competitive except as ~~elected by the board as follows:~~  
19 *provided in paragraph (2).*

20 (1) *The competitive processes utilized shall include all of the*  
21 *following:*

22 (A) *Standardized solicitation documents.*

23 (B) *Minimum qualifications.*

24 (C) *Public advertisement.*

25 (D) *Opportunity for protest.*

26 (2) *The board may contract for investment services pursuant to*  
27 *this section without utilizing a competitive process under any of*  
28 *the following circumstances:*

29 ~~(1)~~

30 (A) Competitive bids or proposals are not required under  
31 subdivision (b) of Section 10340 of the Public Contract Code.

32 ~~(2)~~

(B) At the time of the contract, an executed contract with an investment manager qualifies that person as an emerging investment manager, as defined by the ~~board~~. *board pursuant to subdivision (c) of Section 22228.* The board shall monitor and assess investment managers selected pursuant to this ~~paragraph~~ *subparagraph* in accordance with all other provisions under this part and consistent with its fiduciary duties. *An investment manager with a contract that qualified that person as an emerging investment manager who is not selected pursuant to this paragraph shall have the opportunity to protest any selection made pursuant to this subparagraph.*

(d) *Nothing in this section shall modify any other law restricting the eligibility of persons or entities to bid or be awarded a contract with the board.*

SEC. 2. Section 22257 of the Education Code is amended to read:

22257. (a) ~~Notwithstanding any other law pertaining to state contracting, the~~ The board may contract with or appoint one or more investment managers to manage the assets of the retirement fund ~~under the terms and conditions and utilizing the processes the board deems necessary and consistent with its fiduciary duties.~~ In selecting investment managers, the processes utilized by the board shall be competitive, pursuant to subdivision (e) of Section 22203. If the board has acted with care, skill, prudence, and diligence in meeting the requirements of Sections 22252 and 22253 in selecting and monitoring the investment managers, then, notwithstanding Sections 22250, 22252, 22253, 22254, and 22256, no board member shall be liable for the acts or omissions of the investment managers or be under any obligation to invest or otherwise manage any assets of the retirement fund that are subject to the management of the investment managers.

(b) Incorporation of the fiduciary duty set forth in Section 22250 into the terms of a contract between the system and an investment manager shall be admissible as evidence that the board has acted with care, skill, prudence, and diligence in the selection of the investment manager.

SEC. 3. ~~Section 20172 of the Government Code is amended to read:~~

20172. ~~Notwithstanding any other law, the board may retain a bank or trust company to serve as custodian for safekeeping,~~

1 delivery, securities valuation, investment performance reporting,  
2 and other services in connection with investment of the retirement  
3 fund. The board, without compliance with any law, rule, provision,  
4 or procedure pertaining to state contracting, may enter into  
5 agreements, contracts, or other arrangements with a bank or trust  
6 company for custodian and custodian-related services under the  
7 terms and conditions the board deems necessary and consistent  
8 with its fiduciary duties. In selecting a custodian, the processes  
9 utilized by the board shall be competitive, except where a  
10 competitive bid or proposal is not required under subdivision (b)  
11 of Section 10340 of the Public Contract Code. Notwithstanding  
12 Section 13340, all moneys in the fund are continuously  
13 appropriated, without regard to fiscal years, for payments which  
14 shall be made upon warrants drawn by the Controller upon  
15 demands made by the board. Upon demand of the board, warrants  
16 shall be drawn for the purpose of making payments by electronic  
17 fund transfers.

18 SEC. 4. Section 20211 is added to the Government Code, to  
19 read:

20 20211. The board may contract with individuals or outside  
21 firms with demonstrated expertise to perform trade order  
22 management services in connection with investment of the  
23 retirement fund. The board, without compliance with any law,  
24 rule, provision, or procedure pertaining to state contracting, may  
25 enter into agreements, contracts, or other arrangements for the  
26 providing of trade order management services under the terms and  
27 conditions the board deems necessary and consistent with its  
28 fiduciary duties. In selecting an individual or outside firm for trade  
29 order management services, the processes utilized by the board  
30 shall be competitive, except where a competitive bid or proposal  
31 is not required under subdivision (b) of Section 10340 of the Public  
32 Contract Code.